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NO. 00-694

In The

# Supreme Court Of The United States

JOHN F. DOHERTY, *et al.*,

*Petitioners,*

v.

AMERICAN HOME PRODUCTS CORPORATION,

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

## OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## COUNTER STATEMENT OF THE CASE[1]

This case involves the application and enforcement of unambiguous terms of stock option plans and stock option agreements entered into by at-will employees. In their complaint, petitioners alleged that they or their predecessors-in-interest were employees of Corometrics Medical Systems, Inc. ("Corometrics"), a subsidiary of American Home Products Corporation ("AHPC"). Until 1994, AHPC was the controlling majority shareholder of Corometrics. Prior to AHPC's sale of Corometrics stock to Marquette Electronics, Inc. ("Marquette") in May 1994, petitioners – or their predecessors-in-interest – entered into employee stock option agreements with AHPC pursuant to which they were entitled to purchase AHPC's corporate stock.

Petitioners' complaint alleged that their respective rights as optionees were governed by two stock option plans – a 1985 Stock Option Plan (as amended in 1988) and a 1990 Stock Incentive Plan (collectively, the "Stock Option Plans"). (See Opposition to Petition for Writ of Certiorari ("Opposition to Petition"), A2-A32.) Pursuant to these Stock Option Plans, petitioners or their predecessors-in-interest, as optionees, executed various stock option agreements entitling them to purchase AHPC corporate stock. The stock option agreements entered into by petitioners (collectively, the "Stock Option Agreements") expressly incorporate the terms and conditions of the stock option plan under which the agreement was entered. (Petition for Writ of Certiorari ("Petition"), App. D at 26a.) Petitioners alleged that each of the Stock Option Agreements at issue in this action was entered into pursuant to either the

---

[1] Respondent does not have any parent corporation, and no publicly-held corporation owns 10% or more of respondent's stock. Sup. Ct. R. 29.6.

1985 Stock Option Plan or the 1990 Stock Incentive Plan, and that the terms of the applicable Plan govern their contractual rights and obligations.

The Stock Option Plans expressly set forth the conditions on an optionee's right to exercise an option issued pursuant to the Plans. For example, Section 5(f) of each Plan provides:

> One year after the date of grant of the Option, the optionee may exercise the Option at any time or in part from time to time provided that the optionee has, at the date of exercise, been in the continuous employment of the Company and/or one or more of its subsidiaries for at least two years. *Notwithstanding the foregoing, no Option may be exercised unless the optionee, except as provided in paragraph (g) of this Section, is then employed by the Company or any of its subsidiaries and shall have been continuously employed by the Company or one or more of such subsidiaries since the date of the grant of his or her Option. . . .*

(Opposition to Petition at A6, A21 (emphasis added).) Section 5(g) of the Stock Option Plans then provides for several exceptions to the requirement that only *existing* employees of AHPC or of an AHPC subsidiary may exercise an option. Under this section, options could be exercised for a certain period after the termination of an optionee's employment in accordance with the following provisions:

> (ii) Three years after termination of the optionee's employment by the Company or its subsidiaries due to retirement or disability

> during which three year period the optionee may exercise the Option to the extent he or she was entitled to exercise it at the time of such termination; . . .
>
> (iv) Three months after termination by the Company or one of its subsidiaries of the optionee's employment for any reason other than retirement, disability or deliberate gross misconduct during which three month period the Option may be exercised by the optionee to the extent the optionee was entitled to exercise it at the time of such termination; . . .

(Id. at A7-8, A21-22.) These exceptions were further limited by other provisions of Section 5(g), including Section 5(g)(i). (Id. at A7, A21.)

The Stock Option Agreements entered into pursuant to the Plans repeat the requirement that an optionee must be an employee of AHPC or of an AHPC subsidiary in order to exercise his or her option. (Petition, App. D at 27a.) Taken together, the Stock Option Plans and Stock Option Agreements provide that, in order to exercise an option, an individual must be an employee of AHPC or an AHPC subsidiary at the time an option is to be exercised, or must fall within one of the exceptions set forth in Section 5(g) of the Stock Option Plans.

Petitioners alleged that prior to AHPC's sale of Corometrics, AHPC sent a letter to non-union U.S. employees of Corometrics, briefly explaining the status of each employee's AHPC benefits. Petitioners claimed, without any reasonable factual or legal basis, that this letter improperly limited the period in which Corometrics

employees could exercise stock options pursuant to the Stock Option Plans.[2]

On July 16, 1997, respondent moved to dismiss all but one count of petitioners' complaint. The principal ground for the motion was that, based on the unambiguous terms of the Stock Option Agreements and Stock Option Plans, these counts failed to state a claim upon which relief could be granted. On March 30, 1998, the District Court granted AHPC's motion to dismiss, without leave to amend, in its entirety. Upon reconsideration, in a ruling dated October 15, 1999, the District Court reaffirmed its dismissal of petitioners' claims and further granted summary judgment as to the only remaining claim of their complaint. On June 15, 2000, after *de novo* review, the Second Circuit affirmed the District Court's dismissal in its entirety.

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[2] Petitioners inaccurately assert in their Petition that they each had secured a "vested" contractual right to buy respondent's stock by the time respondent sold its stock interest in Corometrics. Petitioners made no such allegation in their complaint, nor could they. Petitioners also claim that respondent notified petitioners that the vested stock options would not be honored following the sale of Corometrics. (Petition, at 3.) In fact, respondent informed the optionees that they would be given the benefit of the three-year or three-month exception (whichever was applicable) set forth in Section 5(g) of the Stock Option Plans.

## REASONS FOR DENYING THE WRIT

### I. The Second Circuit's Decision Does Not Conflict With The Decision Of Any Other Circuit.

Petitioners inaccurately claim that the Second Circuit's ruling is in "direct conflict" with the Eighth Circuit's decision in Langer v. Iowa Beef Packers, Inc., 420 F.2d 365 (8th Cir. 1970). The instant case is based on Delaware law; Langer is based on Iowa law. Thus, there is no conflict among the circuits over the application of the same law.

In affirming the District Court's decision, the Second Circuit simply applied the terms of the Stock Option Agreements as written. Under Delaware law, parties are bound by the terms of their agreement. Haft v. Dart Group Corp., 841 F. Supp. 549, 564 (D. Del. 1993) (applying Delaware law). Courts are to read a contract as a whole and give its provisions their ordinary meaning. Id. The intent of the parties must be ascertained from the language of the contract, Citadel Holding Corp. v. Roven, 603 A.2d 818, 822 (Del. 1992), and extrinsic evidence is not to be used to interpret contract language where that language is "'plain and clear on its face.'" E.I. du Pont de Nemours & Co. v. Allstate Insurance Co., 693 A.2d 1059, 1061 (Del. 1997) (citation omitted); see also Rhone-Poulenc Basic Chemicals Co. v. American Motorists Insurance Co., 616 A.2d 1192, 1196 (Del. 1992) ("Courts will not torture contractual terms to impart ambiguity where ordinary meaning leaves no room for uncertainty.")

Here, the Second Circuit correctly determined that the terms of the Stock Option Agreements at issue were clear and unambiguous, and that they defeated petitioners' claims as a matter of law. The court of appeals found that

> under the plain language of the Option Plans, appellants were entitled to exercise their options only while employed by a subsidiary of AHP. Thus, under the terms of the Option Plans, when AHP sold its interest in [Corometrics], they were no longer entitled to exercise their options except as their rights might be extended under Subsection (g).

(Petition, App. A at 4a.)

In so holding, the Second Circuit considered, and correctly rejected, petitioners' argument for application of the "prevention doctrine." The Court ruled the prevention doctrine did not apply because respondent did not *wrongfully* prevent the occurrence of a condition precedent in the Stock Option Agreements. (Petition, App. A at 5a; see also Mobile Communications Corp. of America v. MCI Communications Corp., No. 8108, 1985 WL 11574, *4 (Del. Ch. Aug. 17, 1985).) As the Court recognized, respondent simply sold its interest in Corometrics, which it indisputably had the right to do. (Petition, App. A at 5a.) Moreover, the petitioners, as at-will employees, had no right to continued employment, and respondent was permitted, under the contracts at issue, to take actions that would terminate the petitioners' status as employees. (Id.) Thus, based on Delaware law, the Second Circuit properly found that the prevention doctrine has no application to the facts of this case. See Liebler v. Morton-Norwich Products, Inc., No. 77 Civ 4956, 1978 WL 1117 (S.D. N.Y. Sept. 29, 1978) (holding prevention doctrine inapplicable under Delaware law when option agreements required continuous employment by defendant or one of its subsidiaries for at least one year after the date of grant, defendant sold interest in subsidiary prior to that time and plaintiffs were at-will employees); Mobile Communications, 1985 WL 11574, *4 ("the prevention

doctrine does not apply where, under the contract, one party assumes the risk that fulfillment of the condition precedent will be prevented.")[3]

In their attempt to create a conflict among the circuits, petitioners cite cases decided under non-Delaware state law and then argue that these cases "conflict" with the Second Circuit's decision based on Delaware law. This claim is meritless. The decisions upon which petitioners principally rely – Langer, Hilgenberg v. Iowa Beef Packers, Inc., 175 N.W.2d 353 (Iowa 1970) and Schweiger v. Iowa Beef Processors, Inc., 802 F.2d 1032 (8th Cir. 1986), reh'g denied, 816 F.2d 1217 (8th Cir. 1987) – are based on Iowa state law. Obviously, the Second Circuit's application of Delaware law does not create a conflict with another circuit's application of a different state's law.[4]

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[3] The lone Delaware case cited by petitioners on this issue, Haft v. Dart Group Corp., 877 F. Supp. 896 (D. Del. 1995), is consistent with the rule that a condition to performance is excused only where a party *wrongfully* prevents the occurrence of the condition. Id. at 903 (where employer breached fixed-term employment contract by terminating employee without cause, and thus wrongfully terminated employment contract, employer could not rely on termination provision in separate stock option agreement to cut off employee's right to exercise his stock options).

[4] Moreover, the Second Circuit noted that even if Iowa law had applied in this case, "it is doubtful that appellants would be entitled to relief from the plain language of the Option Plans." (Petition, App. A at 6a.) The Court acknowledged that, unlike in Hilgenberg, the petitioners in this case "were given prior notice of [respondent's] sale of its interest in [Corometrics]" and were afforded an opportunity to exercise their options. (Id.)

Petitioners also suggest that the Second Circuit's decision is in "apparent conflict" with the decisions in several other circuits. Petitioners fail to cite any case which would support this statement. In particular, respondent notes that Ballard v. El Dorado Tire Co., 512 F.2d 901 (5th Cir. 1975), is fully consistent with the rule that the prevention doctrine applies only where a party *wrongfully* prevents the occurrence of a contractual condition to performance. Id. at 903-04 (applying prevention doctrine where plaintiff – who had contract under which he could be terminated only for "just cause" – was wrongfully terminated prior to the end of the contract term.) In short, petitioners have failed to present any compelling reason for this Court to grant the requested writ of certiorari.[5]

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[5] Petitioners also claim the Second Circuit erred by dismissing their claims on the pleadings. Petitioners argue they were entitled to discovery on their claim that respondent breached obligations of good faith and fair dealing by purposely drafting ambiguous language in the Stock Option Plans. First, petitioners' suggestion that they made uncontroverted allegations of bad faith mischaracterizes the record; they did not even raise this issue until after the District Court had dismissed their claims, when they filed an improper motion for summary judgment on one of these previously-dismissed claims. Moreover, as both the District Court and the Second Circuit found, the Stock Option Plans are *not* ambiguous; thus, as a matter of law, there is no basis for a claim that respondent breached an obligation of good faith and fair dealing by drafting ambiguous contract language. (Petition, App. A at 7a.; see also Sanders v. Devine, No. Civ. A. 14679, 1997 WL 599539, at *6 (Del. Ch. Sept. 24, 1997) ("[T]he law is settled that where the terms of a contract expressly address the terms of a dispute, those express terms – not an implied covenant of good faith and fair dealing – govern the parties' relations."))

## II. Petitioners Do Not Have Standing To Challenge The Second Circuit's "Summary Order" Rule.

Petitioners also seek a writ of certiorari based on the Second Circuit's designation of its opinion in this case as a "Summary Order." Petitioners have no standing to challenge the constitutionality of the Second Circuit's "Summary Order" rule. A plaintiff must meet three requirements to have standing under Article III of the Constitution. It must show "(1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 120 S.Ct 693, 704 (2000).

Here, petitioners do not – and cannot – allege a cognizable injury to themselves resulting from the Second Circuit's designation of its opinion as a "Summary Order." The Second Circuit's designation merely means that the order may not be cited as precedential authority in *future* cases. It has no effect whatsoever on petitioners' substantive rights. Thus, petitioners have suffered no 'injury in fact' that could be redressed by declaring the Second Circuit's "Summary Order" rule unconstitutional.

## CONCLUSION

For all of the foregoing reasons, it is respectfully requested that the petition for writ of certiorari be denied.

Respectfully submitted,

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## APPENDIX

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# American Home Products Corporation

## 1985 STOCK OPTION PLAN

(As amended by the Board of Directors and/or approved by stockholders through April 25, 1991.)

Section 1. **Purpose.** The purpose of the 1985 Stock Option Plan (the "Plan") is to provide favorable opportunities for officers and other key employees of American Home Products Corporation (the "Company") and its subsidiaries to purchase shares of Common Stock of the Company or to benefit from the appreciation thereof. Such opportunities should provide an increased incentive for these employees to contribute to the future success and prosperity of the Company, thus enhancing the value of the stock for the benefit of the stockholders, and increase the ability of the Company to attract and retain individuals of exceptional skill upon whom, in large measure, its sustained progress, growth and profitability depend.

Pursuant to the Plan, options to purchase the Company's Common Stock may be granted by the Company which shall have a term of ten years from the date of grant for non-qualified stock options and for incentive stock options as hereinafter defined for such term as shall be determined by the Committee (hereinafter defined) not exceeding ten years from the date of grant (the "Option" or "Options"), Options granted under the Plan may be either incentive stock options, as defined in Section 422A(b) of the Internal Revenue Code, or options which do not meet the requirements of said Section 422A(b) of the Code, herein referred to as non-qualified stock options.

It is intended, except as otherwise provided herein, that incentive stock options may be granted under the Plan and that such incentive stock options shall conform to the requirements of Sections 422A and 425 of the Internal Revenue Code and to the provisions of this Plan and shall otherwise be as determined by the Committee and, to the extent provided in the last sentence of Section 2 hereof, approved by the Board of Directors. The terms "subsidiaries" and "subsidiary corporation" shall have the meanings given to them by Section 425 of the Internal Revenue Code. All section references to the Internal Revenue Code in this Plan are intended to include any amendments or substitutions therefor in such Code subsequent to the adoption of the Plan.

Section 2. **Administration.** The Plan shall be administered by a Stock Option Committee (the "Committee") consisting of three or more members of the Board of Directors of the Company who are not employees. The Committee shall have full authority to award Options and Stock Appreciation Rights, to interpret the Plan and to make such rules and regulations and establish such procedures as it deems appropriate for the administration of the Plan, taking into consideration the recommendations of management. The decisions of the Committee shall be binding and conclusive for all purposes and upon all persons unless and except to the extent that the Board of Directors of the Company shall have previously directed that all or specified types of decisions of the Committee shall be subject to approval by the Board of Directors.

Section 3. **Number of Shares.** The total number of shares which may be sold under the Plan and for which Stock Appreciation Rights may be exercised shall not exceed

16,000,000 shares of the Company's Common Stock The shares may be authorized and unissued shares or issued and reacquired shares, as the Board of Directors from time to time may determine. Shares with respect to which Options are not exercised prior to termination of the Option shall be available for Options thereafter granted under the Plan.

Section 4. **Participation.** The Committee may, from time to time, select and grant Options and Stock Appreciation Rights to such officers (whether or not directors) and other key employees of the Company and its subsidiaries ("optionee") and shall determine the number of shares subject to each Option.

Effective as to incentive stock options granted after December 31,1986, the aggregate fair market value of the Company's common stock, determined at the time of grant in accordance with the provisions of Section 5(b) with respect to which incentive stock options granted under this or any other Plan of the Company are exercisable for the first time by an optionee during any calendar year shall not exceed $100,000.

No incentive stock option shall be granted to any individual who at the time when the option would be otherwise granted is the owner directly or indirectly, of stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any subsidiary thereof.

Section 5. **Terms and Conditions of Options.** The terms and conditions of each Option and each Stock Appreciation Right shall be set forth in an agreement or agreements between the Company and the optionee. Such terms and conditions shall include the following as well as

such other provisions, not inconsistent with the Plan, as may be deemed advisable by the Committee.

(a) Number of Shares. The number of shares subject to the Option.

(b) Option Price. The Option Price per share, which shall not be less than 100% of the fair market value of the Company's Common Stock on the date the Option is granted. Fair market value shall be deemed to be the mean between the highest and lowest sale prices of the Common Stock on the Consolidated Transaction Reporting System on the date the Option is granted.

(c) Date of Grant. Subject to previous directions of the Board of Directors pursuant to the last sentence of Section 2, the date of grant of an Option shall be the date when the Committee meets and awards such Option.

(d) Payment. The full purchase price of shares purchased by exercise of the Option shall be paid upon the exercise thereof. A holder of an Option shall have none of the rights of a stockholder until the shares are issued to him or her. Unless the terms of an Option provide to the contrary upon exercise, the Option Price shall be payable in cash or by delivering to the Company shares of the Company's Common Stock owned by the grantee having a fair market value (determined in accordance with Section 5(b)) at least equal to the Option Price or a combination of such Common Stock and cash equal to the Option Price or by delivering any other form of consideration which has been approved by the Committee; and payment of the Option Price by any such means shall be made prior to the delivery of the shares as to which the Option was exercised. Such right to deliver the Company's Common Stock in full or

partial payment of the Option Price shall be limited to twice per calendar year or such other frequency as the Committee shall determine in its absolute discretion.

(e) Terms of Options. Each Option granted pursuant to the Plan shall be for the term specified in the option agreement subject to earlier termination in all cases as provided in paragraph (g) of this Section.

(f) Exercise of Option. The Option may not be exercised during the first year after the date of grant nor after the Option is terminated as provided in paragraph (g) of this Section except (i) for persons retiring within one year after the date of grant in which case the date when the Option is exercisable shall be the same date as his or her retirement date or (ii) for an optionee who becomes disabled or who dies within one year after the date of grant in which case the date when the Option is exercisable shall be the same date as the date his or her disability commences or the date of his or her death provided the optionee has been in the continuous employment of the Company or one or more of its subsidiaries for at least two years at the time of his or her disability or death. One year after the date of grant of the Option, the optionee may exercise the Option at any time or in part from time to time provided the optionee has at the date of exercise been in the continuous employment of the Company and/or one or more of its subsidiaries for at least two years. Notwithstanding the foregoing, no Option may be exercised unless the optionee, except as provided in paragraph (g) of this Section, is then employed by the Company or any of its subsidiaries and shall have been continuously employed by the Company or one or more of such subsidiaries since the date of the grant of his or her Option. Non-qualified stock options and, subject to the

second paragraph of Section 4 hereof, incentive stock options may be exercised regardless of whether or not other Options granted to the optionee pursuant to the Plan are outstanding or whether or not other stock options granted to the optionee pursuant to any other plan are outstanding.

(g) Termination of Options. An Option, to the extent not validly exercised, shall terminate upon the occurrence of the first of the following events:

(i) On the date specified in the Option Agreement;

(ii) Three years after termination of the optionee's employment by the Company or its subsidiaries due to retirement or disability during which three year period the optionee may exercise the Option to the extent he or she was entitled to exercise it at the time of such termination;

(iii) Three years after the date of the optionee's death during which three year period the Option may be exercised by the optionee's legal representative or legatee or such other person designated by an appropriate court as the person entitled to exercise such Option, to the extent the optionee was entitled to exercise it at the time of his or her death;

(iv) Three months after termination by the Company or one of its subsidiaries of the optionee's employment for any reason other than retirement, disability or deliberate gross misconduct during which three month period the Option may be exercised by the optionee to the extent the optionee

was entitled to exercise it at the time of such termination;

(v) Concurrently with the time of termination by the Company or one of its subsidiaries of the optionee's employment for deliberate gross misconduct (for purposes only of this subparagraph (v) an Option shall be deemed to be exercised when the optionee has received the stock certificate representing the shares for which the Option was exercised); or

(vi) Concurrently with the time of termination by the employee of his or her employment with the Company or one of its subsidiaries for reasons other than retirement or disability.

(vii) No Options shall be exercisable after termination of employment unless the optionee shall have during the time period in which his or her Options are exercisable, (a) refrained from becoming or serving as an officer, director or employee of any individual, partnership or corporation or the owner of a business, or a member of a partnership which conducts a business in competition with the Company or renders a service (including without limitation, advertising agencies and business consultants) to competitors with any portion of the business of the Company, (b) made himself or herself available, if so requested by the Company at reasonable times and upon a reasonable basis to consult with, supply information to, and otherwise cooperate with, the Company and (c) refrained from engaging in deliberate action which, as determined by the

Committee, causes substantial harm to the interests of the Company. If these conditions are not fulfilled the optionee shall forfeit all rights to any unexercised Option or Stock Appreciation Right as of the date of the breach of the condition.

(h) Non-transferability of Options and Stock Appreciation Rights. Options and Stock Appreciation Rights shall not be transferable by the optionee other than by will or the laws of descent and distribution and Options and Stock Appreciation Rights shall during his or her lifetime be exercisable only by the optionee.

(i) Applicable Laws or Regulations. The Company's obligation to sell and deliver stock under the Option is subject to such compliance as the Company deems necessary or advisable with federal and state laws rules and regulations.

(j) No Right to Employment. Neither the existence of the Plan nor the grant of any Options or Stock Appreciation Rights pursuant to the Plan shall create in any optionee the right to continue to be employed by the Company or any of its subsidiaries. Employment shall be "at will" and shall be terminable "at will" by the Company or employee with or without cause. Any oral statements or promises to the contrary are not binding upon the Company or the employee.

Section 6. **Stock Appreciation Rights.**

(a) The Committee may, in its sole discretion, from time to time grant Stock Appreciation Rights to certain optionees in connection with any Option granted under this Plan. Stock Appreciation Rights may be

granted either at the time of the grant of an Option under the 1985 Stock Option Plan or at any time thereafter during the term of the Option. Stock Appreciation Rights may be granted with respect to all or part of the stock under a particular Option.

(b) Stock Appreciation Rights shall entitle the holder of the related Option, upon exercise, in whole or in part, of the Stock Appreciation Rights, to receive payment in the amount and form determined pursuant to subparagraph (iii) of paragraph (c) of this Section 6 Stock Appreciation Rights may be exercised only to the extent that the related Option has not been exercised. The exercise of Stock Appreciation Rights shall result in a pro rata surrender of the related Option to the extent that the Stock Appreciation Rights have been exercised.

(c) Stock Appreciation Rights shall be subject to such terms and conditions which are not inconsistent with the Plan as shall from time to time be approved by the Committee and to the following terms and conditions.

(i) Stock Appreciation Rights shall be exercisable at such time or times and to the extent, but only to the extent, that the Option to which they relate shall be exercisable.

(ii) Stock Appreciation Rights and any Options to which they relate shall in no event be exercisable during the first six months after the date of grant and such rights shall not be transferable other than by will or by the laws of descent and distribution and

shall be exercisable during the optionee's lifetime only by him or her or his or her guardian or legal representative.

(iii) Upon exercise of Stock Appreciation Rights, the holder thereof shall be entitled to elect to receive therefor payment in the form of shares of Common Stock (rounded down to the next whole number so no fractional shares are issued), cash or any combination thereof in an amount equal in value to the difference between the Option Price per share and the fair market value per share of Common Stock on the date of exercise multiplied by the number of shares in respect of which the Stock Appreciation Rights shall have been exercised, subject to any limitation on such amount which the Committee may in its discretion impose at the time of grant of the Stock Appreciation Rights. Such election as to the form of payment shall be subject to the consent of the Committee which consent or disapproval may be given at any time after the election to which it relates. The fair market value of Common Stock shall be deemed to be the mean between the highest and lowest sale prices of the Common Stock on the Consolidated Transaction Reporting System on the date the Stock Appreciation Right is exercised or if no transaction on the Consolidated Transaction Reporting System occurred on such date, then on the last

preceding day on which a transaction did take place.

(iv) Any exercise by an officer or director of Stock Appreciation Rights, as well as any election by such officer or director as to the form of payment to such officer or director (Common Stock, cash or any combination thereof), which election is subject to the consent of the Committee in its sole discretion as provided in subparagraph (iii) hereof, shall be made during the ten-day period beginning on the third business day following the release for publication of any quarterly or annual statement of sales and earnings by the Company and ending on the twelfth business day following the date of such release. For purposes hereof officer shall mean only officers who are subject to Section 16(b) of the Securities Exchange Act of 1934, as amended. In the event that a director or officer of the Company subject to Section 16(b) of the Securities Exchange Act of 1934 exercises a Stock Appreciation Right for cash or stock pursuant to this Section 6 during a "window period" as provided in Rule 16(b)-3 under the Securities Exchange Act of 1934, the day on which such right is effectively exercised shall be that day, if any, during such "window period" which is designated by the Committee in its discretion for all such exercises by such individuals during such period. If no such day is designated, the day of effective exercise shall

be determined in accordance with normal administrative practices of the Plan.

(d) To the extent that Stock Appreciation Rights shall be exercised, the Option in connection with which such Stock Appreciation Rights shall have been granted shall be deemed to have been exercised for the purpose of the maximum limitations set forth in the Plan under which such Option shall have been granted. Any shares of Common Stock which are not purchased due to the surrender in whole or in part of an Option pursuant to this Section 6 shall not be available for granting further Options under the Plan.

Section 7. **Adjustment in Event of Change in Stock.** In the event of stock split, stock dividend, combination of shares, merger, or other relevant change in the Company's capitalization, the Committee shall, subject to the approval of the Board of Directors, appropriately adjust the number and kind of shares covered by the Plan, the maximum number of shares that may be sold or for which Stock Appreciation Rights may be awarded under the Plan to any officer or employee, and the number, kind and Option Price of shares subject to outstanding Options; provided, however, that to the extent permitted in the case of incentive stock options by Sections 422A and 425 of the Internal Revenue Code, in the event that the outstanding shares of Common Stock of the Company are increased or decreased or changed into or exchanged for a different number or kind of shares or other securities of the Company or of another corporation, through reorganization, merger, consolidation, liquidation, recapitalization, reclassification, stock split-up, combination of shares or dividend payable in stock of the class which is subject to this Plan, appropriate

adjustment in the number and kind of shares as to which Options may be granted and as to which Options or portions thereof then unexercised shall be exercisable, and in the Option Price thereof, shall be made to the end that the proportionate number of shares or other securities as to which Options may be granted and the Option holders' proportionate interests under outstanding Options shall be maintained as before the occurrence of such event; and provided, further, that any such adjustment in shares subject to outstanding Options (including any adjustments in the Option Price) shall be made in such manner as not to constitute a modification as defined by subsection (h)(3) of Section 425 of the Internal Revenue Code.

Section 8. **Amendment and Discontinuance.** The Board of Directors of the Company may from time to time amend or revise the terms of the Plan, or may discontinue the Plan at any time as permitted by law, provided, however, that such amendment shall not (except as provided in Section 7), without further approval of the stockholders, (i) increase the aggregate number of shares which may be sold under the Plan; (ii) increase the maximum number of shares which may be sold under the Plan to any one individual; (iii) change the manner of determining the Option Price (other than determining the fair market value of the Common Stock to conform with applicable provisions of the Internal Revenue Code or regulations thereunder); or (iv) extend the term of the Plan or the maximum period during which any Option may be exercised. No amendments, revision or discontinuance of the Plan shall, without the consent of an optionee, in any manner adversely affect his or her rights under any Option theretofore granted under the Plan.

Section 9. **Effective Date and Duration.** The Plan was adopted by the Board of Directors of the Company on January 31, 1985, and approved by the stockholders of the Company. No Option may be granted under the Plan before January 31, 1985 nor after January 30, 1995. Options granted before January 31, 1995 may extend beyond the date last mentioned in accordance with their terms.

Section 10. **Construction.** The Plan and Options and Stock Appreciation Rights granted thereunder shall be governed by and construed in accordance with the Laws of the State of Delaware and in accordance with such Federal law as may be applicable.

# American Home Products Corporation

## 1990 STOCK INCENTIVE PLAN

(As approved by stockholders on April 25, 1991 and as amended by the Board of Directors on January 30, 1992.)

Section 1. **Purpose.** The purpose of the 1990 Stock Incentive Plan (the "Plan") is to provide favorable opportunities for officers and other key employees of American Home Products Corporation (the "Company") and its subsidiaries to acquire shares of Common Stock of the Company or to benefit from the appreciation thereof. Such opportunities should provide an increased incentive for these employees to contribute to the future success and prosperity of the Company, thus enhancing the value of the stock for the benefit of the stockholders, and increase the ability of the Company to attract and retain individuals of exceptional skill upon whom, in large measure, its sustained progress, growth and profitability depend.

Pursuant to the Plan, options to purchase the Company's Common Stock and Stock Appreciation Rights may be granted and Restricted Stock may be awarded by the Company. Options to purchase the Company's Common Stock shall have a term not exceeding ten years from the date of grant for non-qualified stock options as shall be determined by the Committee (hereinafter defined), and for incentive stock options as hereinafter defined for such term as shall be determined by the Committee not exceeding ten years from the date of grant (the "Option" or "Options"). Options granted under the Plan may be either incentive stock options, as defined in Section 422(b) of the Internal Revenue

Code, or options which do not meet the requirements of said Section 422(b) of the Code, herein referred to as non-qualified stock options.

It is intended, except as otherwise provided herein, that incentive stock options may be granted under the Plan and that such incentive stock options shall conform to the requirements of Sections 422 and 424 of the Internal Revenue Code and to the provisions of this Plan and shall otherwise be as determined by the Committee and, to the extent provided in the last sentence of Section 2 hereof, approved by the Board of Directors. The terms "subsidiaries" and "subsidiary corporation" shall have the meanings given to them by Section 424 of the Internal Revenue Code. All section references to the Internal Revenue Code in this Plan are intended to include any amendments or substitutions therefor in such Code subsequent to the adoption of the Plan.

Section 2. **Administration.** The Plan shall be administered by a Compensation and Benefits Committee (the "Committee") consisting of three or more members of the Board of Directors of the Company who are not employees. The Committee shall have full authority to grant Options and Stock Appreciation Rights, and make Restricted Stock awards, to interpret the Plan and to make such rules and regulations and establish such procedures as it deems appropriate for the administration of the Plan, taking into consideration the recommendations of management. The decisions of the Committee shall be binding and conclusive for all purposes and upon all persons unless and except to the extent that the Board of Directors of the Company shall have previously directed that all or specified types of decisions of the Committee shall be subject to approval by the Board of Directors.

Section 3. **Number of Shares.** The total number of shares which may be sold or awarded under the Plan and for which Stock Appreciation Rights may be exercised shall not exceed 12,000,000 shares of the Company's Common Stock. The shares may be authorized and unissued or issued and reacquired shares, as the Board of Directors from time to time may determine. Shares with respect to which Options or Stock Appreciation Rights are not exercised prior to termination of the Option and shares that are part of a Restricted Stock award which are forfeited before the restrictions lapse shall be available for Options and Stock Appreciation Rights thereafter granted and for Restricted Stock thereafter awarded under the Plan. Further, any shares of the Company's Common Stock that are used in full or partial payment of the purchase price for any option under this Plan or any other stock option plan of the Company shall become available for issuance under the Plan.

Section 4. **Participation.** The Committee may, from time to time, select and grant Options and Stock Appreciation Rights to officers (whether or not directors) and other key employees of the Company and its subsidiaries ("optionee") and award Restricted Stock to officers (whether or not directors) and other key employees of the Company and its subsidiaries and shall determine the number of shares subject to each Option or award.

The aggregate fair market value of the Company's Common Stock, determined at the time of grant in accordance with the provisions of Section 5(b), with respect to which incentive stock options granted under this or any other Plan of the Company are exercisable for the first time by an optionee during any calendar year shall not exceed $100,000, or such other amount as may be permitted under the Internal Revenue Code.

No incentive stock option shall be granted to any individual who, at the time when the option would be otherwise granted, is the owner, directly or indirectly, of stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any subsidiary thereof.

Section 5. **Terms and Conditions of Options.** The terms and conditions of each Option and each Stock Appreciation Right shall be set forth in an agreement or agreements between the Company and the optionee. Such terms and conditions shall include the following as well as such other provisions, not inconsistent with the Plan, as may be deemed advisable by the Committee:

(a) Number of Shares. The number of shares subject to the Option.

(b) Option Price. The Option Price per share, which shall not be less than 100% of the fair market value of the Company's Common Stock on the date the Option is granted. Fair market value shall be deemed to be the mean between the highest and lowest sale prices of the Common Stock on the Consolidated Transaction Reporting System on the date the Option is granted.

(c) Date of Grant. Subject to previous directions of the Board of Directors pursuant to the last sentence of Section 2, the date of grant of an Option shall be the date when the Committee meets and awards such Option.

(d) Payment. The full purchase price of shares purchased by exercise of the Option shall be paid upon the exercise thereof. A holder of an Option shall have none of the rights of a stockholder until the shares are issued to him

or her. Unless the terms of an Option provide to the contrary, upon exercise, the Option Price shall be payable in cash or by delivering to the Company shares of the Company's Common Stock owned by the grantee having a fair market value (determined in accordance with Section 5 (b)) at least equal to the Option Price, or a combination of such Common Stock and cash equal to the Option Price, or by delivering any other form of consideration which has been approved by the Committee; and payment of the Option Price by any such means shall be made prior to the delivery of the shares as to which the Option was exercised. Such right to deliver the Company's Common Stock in full or partial payment of the Option Price shall be limited to such frequency as the Committee shall determine in its absolute discretion.

(e) Terms of Options. Each Option granted pursuant to the Plan shall be for the term specified in the option agreement subject to earlier termination in all cases as provided in paragraph (g) of this Section.

(f) Exercise of Option. The Option may not be exercised during the first year after the date of grant nor after the Option is terminated as provided in paragraph (g) of this Section except (i) for persons retiring within one year after the date of grant in which case the date when the Option is exercisable shall be the same date as his or her retirement date or (ii) for an optionee who becomes disabled or who dies within one year after the date of grant in which case the date when the Option is exercisable shall be the same date as the date his or her disability commences or the date of his or her death provided the optionee has been in the continuous employment of the Company or one or more of its subsidiaries for at least two years at the time of his or her disability or death. One year after the date of grant of the

Option, the optionee may exercise the Option at any time or in part from time to time provided the optionee has, at the date of exercise, been in the continuous employment of the Company and/or one or more of its subsidiaries for at least two years. Notwithstanding the foregoing, no Option may be exercised unless the optionee, except as provided in paragraph (g) of this Section, is then employed by the Company or any of its subsidiaries and shall have been continuously employed by the Company or one or more of such subsidiaries since the date of the grant of his or her Option. Also, notwithstanding the provisions of this Section 5(f), Options which are granted by the Committee to replace shares of the Company's Common Stock used as part or all of the purchase price of other options shall, subject to the discretion of and determination by the Committee, be exercisable less than one year from the date of the Option grant. Non-qualified stock options and incentive stock options may be exercised regardless of whether or not other Options granted to the optionee pursuant to the Plan are outstanding or Whether or not other stock options granted to the optionee pursuant to any other plan are outstanding.

(g) Termination of Options. An Option, to the extent not validly exercised, shall terminate upon the occurrence of the first of the following events:

(i) On the date specified in the Option Agreement;

(ii) Three years after termination of the optionee's employment by the Company or its subsidiaries due to retirement or disability during which three year period the optionee may exercise the Option to the extent he or she was entitled to exercise it at the time of such termination;

(iii) Three years after the date of the optionee's death during which three year period the Option may be exercised by the optionee's legal representative or legatee or such other person designated by an appropriate court as the person entitled to exercise such Option to the extent the optionee was entitled to exercise it at the time of his or her death;

(iv) Three months after termination by the Company or one of its subsidiaries of the optionee's employment for any reason other than retirement, disability or deliberate gross misconduct during which three month period the Option may be exercised by the optionee to the extent the optionee was entitled to exercise it at the time of such termination;

(v) Concurrently with the time of termination by the Company or one of its subsidiaries of the optionee's employment for deliberate gross misconduct (for purposes only of this subparagraph (v) an Option shall be deemed to be exercised when the optionee has received the stock certificate representing the shares for which the Option was exercised); or

(vi) Concurrently with the time of termination by the employee of his or her employment with the Company or one of its subsidiaries for reasons other than retirement or disability.

(vii) No Options shall be exercisable after termination of employment unless the optionee shall

have during the time period in which his or her Options are exercisable, (a) refrained from becoming or serving as an officer, director or employee of any individual, partnership or corporation, or the owner of a business, or a member of a partnership which conducts a business in competition with the Company or renders a service (including without limitation, advertising agencies and business consultants) to competitors with any portion of the business of the Company, (b) made himself or herself available, if so requested by the Company, at reasonable times and upon a reasonable basis to consult with, supply information to, and otherwise cooperate with, the Company and (c) refrained from engaging in deliberate action which, as determined by the Committee causes substantial harm to the interests of the Company. If these conditions are not fulfilled, the optionee shall forfeit all rights to any unexercised Option or Stock Appreciation Right as of the date of the breach of the condition.

(h) Non-transferability of Options and Stock Appreciation Rights. Options and Stock Appreciation Rights shall not be transferable by the optionee other than by will or the laws of descent and distribution, and Options and Stock Appreciation Rights shall during his or her lifetime be exercisable only by the optionee.

(i) Applicable Laws or Regulations. The Company's obligation to sell and deliver stock under the Option is subject to such compliance as the Company deems necessary or advisable with federal and state laws rules and regulations.

Section 6. **Stock Appreciation Rights.**

(a) The Committee may, in its sole discretion, from time to time grant Stock Appreciation Rights to certain optionees in connection with any Option granted under this Plan. Stock Appreciation Rights may be granted either at the time of the grant of an Option under the Plan or at any time thereafter during the term of the Option. Stock Appreciation Rights may be granted with respect to all or part of the stock under a particular Option.

(b) Stock Appreciation Rights shall entitle the holder of the related Option upon exercise, in whole or in part, of the Stock Appreciation Rights, to receive payment in the amount and form determined pursuant to subparagraph (iii) of paragraph (c) of this Section 6. Stock Appreciation Rights may be exercised only to the extent that the related Option has not been exercised. The exercise of Stock Appreciation Rights shall result in a pro rata surrender of the related Option to the extent that the Stock Appreciation Rights have been exercised.

(c) Stock Appreciation Rights shall be subject to such terms and conditions which are not inconsistent with the Plan as shall from time to time be approved by the Committee and to the following terms and conditions.

(i) Stock Appreciation Rights shall be exercisable at such time or times and to the extent but only to the extent, that the Option to which they relate shall be exercisable.

(ii) Stock Appreciation Rights and any Options to which they relate shall in no event be exercisable during the first six months after the date

of grant and such rights shall not be transferable other than by will or by the laws of descent and distribution and shall be exercisable during the optionee's lifetime only by him or her or his or her guardian or legal representative.

(iii) Upon exercise of Stock Appreciation Rights, the holder thereof shall be entitled to elect to receive therefor payment in the form of shares of Common Stock (rounded down to the next whole number so no fractional shares are issued), cash or any combination thereof in an amount equal in value to the difference between the Option Price per share and the fair market value per share of Common Stock on the date of exercise multiplied by the number of shares in respect of which the Stock Appreciation Rights shall have been exercised, subject to any limitation on such amount which the Committee may in its discretion impose at the time of grant of the Stock Appreciation Rights. Such election as to the form of payment shall be subject to the consent of the Committee which consent or disapproval may be given at any time after the election to which it relates. The fair market value of Common Stock shall be deemed to be the mean between the highest and lowest sale prices of the Common Stock on the Consolidated Transaction Reporting System on the date the Stock Appreciation Right is exercised or if no transaction on the Consolidated Transaction Reporting System occurred on such date, then on the last preceding day on which a transaction did take place.

(iv) Any exercise by an officer or director of Stock Appreciation Rights as well as any election

by such officer or director as to the form of payment to such officer or director (Common Stock, cash or any combination thereof), which election is subject to the consent of the Committee in its sole discretion as provided in subparagraph (iii) hereof shall be made during the ten-day period beginning on the third business day following the release for publication of any quarterly or annual statement of sales and earnings by the Company and ending on the twelfth business day following the date of such release. For purposes hereof officer shall mean only officers who are subject to Section 16(b) of the Securities Exchange Act of 1934 as amended. In the event that a director or officer of the Company subject to Section 16(b) of the Securities Exchange Act of 1934 exercises a Stock Appreciation Right for cash or stock pursuant to this Section 6 during a "window period" as provided in Rule 16(b)-3 under the Securities Exchange Act of 1934, the day on which such right is effectively exercised shall be that day, if any, during such "window period" which is designated by the Committee in its discretion for all such exercises by such individuals during such period. If no such day is designated, the day of effective exercise shall be determined in accordance with normal administrative practices of the Plan.

(d) To the extent that Stock Appreciation Rights shall be exercised, the Option in connection with which such Stock Appreciation Rights shall have been granted shall be deemed to have been exercised for the purpose of the maximum limitations set forth in the Plan under which such Option shall have been granted. Any shares of Common Stock which are not purchased due to the surrender in whole or in part of an Option pursuant to this

Section 6 shall not be available for granting further Options under the Plan.

Section 7. **Restricted Stock Performance Awards.** The Committee may, in its sole discretion, from time to time, make awards of shares of the Company's Common Stock or awards of units representing shares of the Company's Common Stock, up to 2,000,000 shares, to such officers and other key employees of the Company and its subsidiaries in such quantity, and on such terms, conditions and restrictions (whether based on performance standards periods of service or otherwise) as the Committee shall establish ("Restricted Stock"). The terms, conditions and restrictions of any Restricted Stock award made under this Plan shall be set forth in an agreement or agreements between the Company and the recipient of the award.

(a) Issuance of Restricted Stock. The Committee shall determine the manner in which Restricted Stock shall be held during the period it is subject to restrictions.

(b) Stockholder Rights. Beginning on the date of grant of the Restricted Stock award and subject to the execution of the award agreement by the recipient of the award and subject to the terms, conditions and restrictions of the award agreement, the Committee shall determine to what extent the recipient of the award has the rights of a stockholder of the Company including, but not limited to, whether or not the employee receiving the award has the right to vote the shares or to receive dividends or dividend equivalents.

(c) Restriction on Transferability. None of the shares or units of a Restricted Stock award may be assigned or transferred, pledged or sold prior to their delivery to a

recipient or in the case of a recipient's death, to the recipient's legal representative or legatee or such other person designated by an appropriate court.

(d) Delivery of Shares. Upon the satisfaction of the terms, conditions and restrictions contained in the Restricted Stock award agreement or the release from the terms, conditions and restrictions of a Restricted Stock award agreement, as determined by the Committee, the Company shall deliver, as soon as practicable, to the recipient of the award, or in the case of his or her death to his or her legal representative or legatee or such other person designated by an appropriate court, a stock certificate for the appropriate number of shares of the Company's Common Stock, free of all such restrictions, except for any restrictions that may be imposed by law.

(e) Taxes. Notwithstanding any other provision hereof, the Committee may in its absolute discretion provide with respect to the delivery of shares to a recipient of a Restricted Stock award, that the number of such shares which the recipient thereof shall be entitled to receive and which shall be delivered by the Company shall be (i) the number of shares which would have been delivered in the absence of this Section 7(e), minus (ii) the number of whole shares of Common Stock necessary to satisfy federal, state and/or local tax withholding obligations which are imposed on the Company by applicable law in respect of the delivery of such award (and which may be satisfied by the reduction effected hereby in the number of deliverable shares), it being understood that the value of the shares referred to in clause (ii) above shall be determined, for the purposes of satisfying such withholding obligations, on the basis of the average of the high and low per share prices for the Common Stock as reported on the Consolidated Transaction Reporting System

on the date of authorization of delivery by the Committee, or on such other reasonable basis for determining fair market value as the Committee may from time to time adopt, Notwithstanding any term or provision of this Section 7(e), in determining the total number of shares which may be sold or awarded under this Plan pursuant to Section 3 hereof, the number of shares withheld in accordance with this Section 7(e) shall be available for issuance under the Plan.

(f) Forfeiture of Restricted Stock. Subject to Section 7(g), all of the restricted shares or units with respect to a Restricted Stock award shall be forfeited and all rights of the recipient with respect to such restricted shares or units shall terminate unless the recipient continues to be employed by the Company or its subsidiaries until the expiration of the forfeiture period and the satisfaction of any other conditions set forth in the award agreement

(g) Waiver of Forfeiture Period. Notwithstanding any other provisions of the Plan, the Committee may, in its sole discretion, waive the forfeiture period and any other conditions set forth in any award agreement under certain circumstances (including the death, disability or retirement of the recipient of the award or a material change in circumstances arising after the date of an award) and subject to such terms and conditions (including forfeiture of a proportionate number of the restricted shares) as the Committee shall deem appropriate.

Section 8. **Adjustment in Event of Change in Stock.** In the event of stock split, stock dividend, cash dividend (other than a regular cash dividend), combination of shares, merger, or other relevant change in the Company's capitalization, the Committee shall, subject to the approval of the Board of Directors, appropriately adjust the number

and kind of shares available for issuance under the Plan, the number, kind and Option Price of shares subject to outstanding Options and Stock Appreciation Rights and the number and kind of shares subject to an outstanding Restricted Stock award; provided, however, that to the extent permitted in the case of incentive stock options by Sections 422 and 424 of the Internal Revenue Code, in the event that the outstanding shares of Common Stock of the Company are increased or decreased or changed into or exchanged for a different number or kind of shares or other securities of the Company or of another corporation through reorganization, merger, consolidation, liquidation, recapitalization, reclassification, stock split-up, combination of shares or dividend, appropriate adjustment in the number and kind of shares as to which Options may be granted and as to which Options or portions thereof then unexercised shall be exercisable, and in the Option Price thereof, shall be made to the end that the proportionate number of shares or other securities as to which Options may be granted and the Option holders' proportionate interests under outstanding Options shall be maintained as before the occurrence of such event; provided, that any such adjustment in shares subject to outstanding Options (including any adjustments in the Option Price) shall be made in such manner as not to constitute a modification as defined by subsection (h)(3) of Section 424 of the Internal Revenue Code; and provided, further, that in the event of an adjustment in the number of shares or kind under a Restricted Stock Performance Award pursuant to this Section 8 any new shares or units issued to a recipient of a Restricted Stock Performance Award shall be subject to the same terms conditions and restrictions as the underlying Restricted Stock Performance Award for which the adjustment was made.

Section 9. **Amendment and Discontinuance.** The Board of Directors of the Company may from time to time amend or revise the terms of the Plan or may discontinue the Plan at any time as permitted by law, provided, however, that such amendment shall not (except as provided in Section 8) without further approval of the stockholders, (i) increase the aggregate number of shares which may be sold or awarded under the Plan; (ii) change the manner of determining the Option Price (other than determining the fair market value of the Common Stock to conform with applicable provisions of the Internal Revenue Code or regulations thereunder); or (iii) extend the term of the Plan or the maximum period during which any Option may be exercised. No amendments, revision or discontinuance of the Plan shall, without the consent of an optionee, in any manner adversely affect his or her rights under any Option theretofore granted under the Plan.

Section 10. **Effective Date and Duration.** The Plan was adopted by the Board of Directors of the Company on November 29, 1990 and restated on January 31, 1991, subject to approval by the stockholders of the Company at a meeting to be held on April 25, 1991. Neither the Plan nor any option or Stock Appreciation Right or Restricted Stock award shall become binding until the Plan is approved by a vote of the majority of the Company's outstanding stock. Notwithstanding the foregoing, the provisions set forth in the last sentence of Section 3 and the last sentence of Section 7(e) shall not be effective (i) at any time prior to the effectiveness with respect to the Plan of the revised rules for employee benefit plans under Section 16 of the Securities Exchange Act of 1934 issued by the Securities and Exchange Commission on February 8, 1991, either upon election by the Company or otherwise, unless and until the Committee has received an opinion of counsel to the Company satisfactory

to the Committee to the effect that such provisions are not inconsistent with the requirements of Rule 16b-3 under the Securities Exchange Act of 1934 as such rule is in effect prior to May 1, 1991, and (ii) at any time after such effectiveness unless and until the Committee has received such an opinion to the effect that such provisions are not inconsistent with the requirements of Rule 16b-3 as then in effect. No option may be granted and no stock may be awarded under the Plan before November 29, 1990 nor after November 28, 2000. Options granted and stock awarded before November 29, 2000 may extend beyond the date last mentioned in accordance with their terms.

Section 11. **Construction and Conditions.** The Plan and Options, Restricted Stock Awards, and Stock Appreciation Rights granted thereunder shall be governed by and construed in accordance with the laws of the State of Delaware and in accordance with such Federal law as may be applicable.

Neither the existence of the Plan nor the grant of any Options or Stock Appreciation Rights or awards of Restricted Stock pursuant to the Plan shall create in any optionee the right to continue to be employed by the Company or its subsidiaries. Employment shall be "at will" and shall be terminable "at will" by the Company or employee with or without cause. Any oral statements or promises to the contrary are not binding upon the Company or the employee.